

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

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JOHN DOE,

Plaintiff,

Civil Action No:

**DECLARATION OF
ANDREW MILTENBERG, ESQ.**

-against-

**UNIVERSITY OF TEXAS HEALTH SCIENCE
CENTER AT HOUSTON, UNIVERSITY
OF TEXAS BOARD OF REGENTS,
MARGARET MCNEESE, in her individual
and official capacity, DEANA MOYLAN,
in her individual and official capacity,
SHEELA LAHOTI, in her individual and
official capacity, and DANA MCDOWELLE,
in her individual and official capacity,**

Defendants.

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Andrew Miltenberg, hereby declares subject to the penalties of perjury pursuant to 28 U.S.C. § 1746:

1. I am a Partner in the law firm of Nesenoff & Miltenberg, LLP, the attorneys of record for the Plaintiff in this matter. In that capacity, I am fully familiar with the facts and issues set forth in this Declaration, which is being submitted in support of Plaintiff's *ex parte* motion to proceed pseudonymously in this action.

2. In the instant action, Plaintiff seeks redress due to the actions, inactions, omissions, errors, flawed procedures and/or overall failure of Defendants University of Texas Health Science Center at Houston ("UT Health" or the University"), University of Texas Board of Regents, Margaret McNeese, Deana Moylan, Sheela Lahoti, and Dana McDowelle (hereinafter collectively

referred to as “Defendants”) to provide Plaintiff with basic fairness and equity in accordance with the United States Constitution in investigating and adjudicating a complaint of sexual misconduct filed against Plaintiff by Jane Roe¹, another UT Health student.

3. The factual allegations giving rise to this action are detailed in Plaintiff’s complaint, which is hereby incorporated by reference.

4. Plaintiff enrolled at UT Health as a medical student in the Fall of 2017.

5. In February 2020, Jane Roe, with whom Plaintiff had a prior dating relationship, claimed that Plaintiff had engaged in dating violence in violation of the University’s Sexual Misconduct Policy (the “Policy”), and as a result Plaintiff was arrested and the University commenced an investigation.

6. Throughout the investigation, Defendants employed gender biased techniques, seeking to only corroborate Roe’s claims, thus creating a factually incorrect record.

7. As a result, despite the fact that the conduct was clearly a mental health event and not an instance of dating violence, Plaintiff was found responsible for dating violence under the Policy without a hearing, and without the opportunity to appeal the finding.

8. On August 5, the University allowed Plaintiff to return to his classes if he completed numerous mental health conditions, demonstrating once again that this was a mental health issue and not an act of dating violence.

9. Despite receiving an expunction, which made records of Plaintiff’s arrest disappear, the University continued to treat Plaintiff as guilty and threatened him that he did not “want [his] situation to be known.”

¹ Plaintiff, by this motion, also seeks to refer to his accuser and other non-party witnesses by pseudonym to protect their privacy.

10. Moreover, the University proceeded to note the finding on Plaintiff's Medical Student Performance Evaluation ("MSPE"), thereby rendering it nearly impossible for Plaintiff to match with a competitive residency program.

11. The finding of responsibility has been marked on Plaintiff's file and will impact Plaintiff's career opportunities for the rest of his life.

12. Through Plaintiff's various communications with the University, Defendants are well aware of Plaintiff's true identity in this matter.

13. Plaintiff contends that throughout the investigation and adjudication process, Defendants engaged in substantial errors in violation of federal law. A non-exhaustive list of Defendants' wrongful actions include the following: Plaintiff was presumed guilty from the start; the University failed to consider credibility concerns of Roe despite her allegations that were clearly discredited by the evidence; the University failed to treat the event as a mental health crisis rather than an instance of dating violence; and the University failed to provide Plaintiff with a hearing before finding Plaintiff responsible as required in HOOP 59, thus precluding Plaintiff's ability to present a defense and cross-examine witnesses.

14. With his records forever marring him as a sexual misconduct offender, Plaintiff will be effectively barred from obtaining employment in a competitive residency program.

15. Plaintiff therefore brings this action to obtain injunctive and monetary relief based on violations of sex discrimination and constitutional due process.

16. In light of the personal and sensitive nature of the facts of this matter, as well as the great risk to Plaintiff if he should be forced to disclose his identity, as set forth in greater detail in this accompanying Memorandum of Law, Plaintiff should be permitted to protect his identity by filing the Complaint under pseudonym.

I declare under the penalty of perjury that the foregoing is true and correct, pursuant to Title 28, United States Code, Section 1746.

**Dated: New York, New York
April 30, 2021**

Andrew Miltenberg
Andrew Miltenberg, Esq.